BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

EZEQUIEL CARRERA
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-60
Case No. 69-1436

S.S.A. No.

GENERAL MOTORS CORPORATION
FISHER BODY DIVISION
(Employer)

The claimant appealed from Referee's Decision No. BK-16251 which held that the claimant was an unemployed individual for the one-week period August 18 through August 24, 1968 under the provisions of section 1252 of the Unemployment Insurance Code and was subject to disqualification for unemployment benefits for two weeks commencing September 15, 1968 under section 1257(a) of the code on the ground that he wilfully made a false statement to obtain benefits. Written argument was submitted on behalf of the claimant and the Department.

On August 26, 1969 we accepted as additional evidence questionnaires completed by the employer and the claimant's union. All parties were furnished copies of these questionnaires and afforded an opportunity to submit rebuttal argument. No rebuttal has been received.

STATEMENT OF FACTS

The claimant was employed by the above identified employer as an assembly worker at a terminal wage of $3.44 per hour.

He filed an additional claim for benefits effective July 21, 1968 after being laid off by his employer. On August 26, 1968 he certified for benefits for the week ended August 24, 1968 and received his full weekly benefit amount of $56. On the continued claim certification for this week the claimant stated he had no employment and received no wages during that week.

However, on August 23, 1968 the claimant was recalled to work and worked from 7 a.m. to 11:18 a.m. On August 30, 1968 the claimant received $113.04 from his employer. This amount represented $14.79 in wages for work performed on August 23, 1968 and $98.25 representing "Automatic Short Week Benefit." This latter amount was paid to the claimant under the terms of a contract agreed upon between the claimant's employer and his union, The United Auto Workers Union. The terms of the contract relative to "Automatic Short Week Benefit" read as follows:

> "The Automatic Short Week Benefit payable to any eligible Employee for any Week beginning on or after February 9, 1968, shall be an amount equal to the product of the number by which 40 exceeds his Compensated or Available Hours, counted to the nearest tenth of an hour, multiplied by 80% of his Base Hourly Rate."
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> "If the Company determines that an Employee has received an Automatic Short Week Benefit for any Week with respect to all or part of which he has received a State System Benefit, the full amount of such Automatic Short Week Benefit, or a portion of such Benefit equivalent to the State System Benefit or that part thereof applicable to such Week, whichever is less, shall be treated as an overpayment in accordance with this Section."

The Department issued a determination holding the claimant not unemployed during the period August 18 through August 24, 1968 on the ground that he had received wages in excess of his weekly benefit amount;

subject to disqualification for two weeks commencing September 15, 1968 because he had made a wilful false statement and liable for the repayment of $56 representing benefits paid for the week ended August 24, 1968. The claimant testified that he failed to notify the Department of the work he performed on August 23, 1968 because he is of foreign extraction and is unable to read or write English and therefore was "confused."

According to the additional evidence received, an employee, in order to receive "Automatic Short Week Benefit," does not have to file a claim for unemployment insurance benefits, nor is eligibility for such benefits a prerequisite to the receipt of "Automatic Short Week Benefit."

REASONS FOR DECISION

It is first necessary to decide the character of the money received by the claimant which was identified as "Automatic Short Week Benefit." If this money represents wages, then the claimant was not an unemployed individual during the week ending August 24, 1968 under section 1252 of the code which reads in pertinent part as follows:

> "1252. An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount. . . ."

If the money received by the claimant is considered to be supplemental unemployment benefits as decided by the referee, then the claimant would be entitled to part-total benefits because the money received did not constitute wages under section 1265 of the code. This section reads as follows:

> "1265. Notwithstanding any other provisions of this division, payments to an individual under a plan or system established by an employer which makes provisions for his employees generally, or for a class or group of his employees, for the purpose of supplementing unemployment compensation benefits shall not be construed to be wages or compensation for personal services under this division and benefits payable under this division shall not be denied or reduced because of the receipt of payments under such arrangements or plans.
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> "This amendment is hereby declared to be merely a clarification of the original intention of the Legislature and is not a substantive change, and is in conformity with the existing administrative interpretation of the law."

There is no question that the "Automatic Short Week Benefit" which the claimant received was paid "under a plan or system established" by the employer and it appears that the plan was available at least to all those employees whose jobs were covered by the contract between the employer and the union. On this basis it might be construed that the "Automatic Short Week Benefit" falls within the definition of supplemental unemployment compensation benefits under section 1265 of the code. However, in our opinion, it is significant that the contract provides that if an employee entitled to an "Automatic Short Week Benefit" receives unemployment benefits, then his "Automatic Short Week Benefit" is reduced by the amount of unemployment benefits he receives. Therefore, this payment received from the employer cannot be construed to be supplemental unemployment benefits but rather it may be considered that such payment is to replace unemployment benefits. That is, an employee is protected from a wage loss due to involuntary unemployment under the terms of the contract, and as pointed out by the court in Bradhsaw v. California Employment Stabilization Commission (1956), 46 Cal. 2d 608, 297 P. 2d 970, ". . . interpretation of employment contracts and of the Unemployment Insurance Act that result in duplication of benefits to an . . . employee are not encouraged. . . ." and duplication of payments should not be made.

This payment received by the claimant was a result of the employer-employee relationship and could be construed perhaps as a type of guaranteed wage. In any event, in our opinion, the "Automatic Short Week Benefit" represents wages and therefore since the claimant, during the week in question, was in receipt of wages in excess of his weekly benefit amount, he was not unemployed.

Section 1257(a) of the code provides for the disqualification of a claimant if he wilfully made a false statement or wilfully failed to report a material fact to obtain benefits. When the claimant certified for benefits for the week ended August 24, 1968 he informed the Department that during that week he did not work and did not earn wages; whereas the facts show that he did work and did earn wages and he knew he did. Therefore, it is concluded that when the claimant certified for benefits for the week ended August 24, 1968 he wilfully made a false statement. His inability to read or write English does not excuse this false statement. He was obligated to inform the department completely of his activities during that week with respect to work and he did not do so. He is subject to disqualification under section 1257(a) of the code for the period provided in section 1260 of the code. Both the Department and the referee held the claimant subject to disqualification for two weeks and we see no reason to change this period of disqualification.

Section 1375 of the code provides that if an individual is overpaid benefits he is liable for the amount overpaid unless the overpayment was not due to fraud, misrepresentation or wilful nondisclosure on the part of the claimant; the overpayment was received without fault and repayment of the amount overpaid would be against equity and good conscience.

The claimant received benefits for the week ended August 24, 1968 because of his wilful false statement. He is liable for the amount overpaid.

DECISION

The decision of the referee is modified. The "Automatic Short Week Benefit" received by the claimant represents wages within the meaning of section 1252 of the code and during the week with respect to which these wages were payable the claimant was not an unemployed individual. The claimant is subject to disqualification under section 1257(a) of the code for two weeks as found by the referee. He has been overpaid benefits and is liable for the amount overpaid.

Sacramento, California, December 9, 1969

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

DISSENTING - Written Opinion Attached

LOWELL NELSON

DON BLEWETT

DISSENTING OPINION

We agree with the majority that this claimant made a wilful false statement and should be disqualified. However, we do not agree with the majority that the money received by the claimant, in addition to his regular wages, during the week in question represented wages.

As we view the record, there was no question that the "Automatic Short Week Benefit" which the claimant received was paid "under a plan or system established" by the employer, and it appears that the plan was available at least to all of those employees whose jobs were covered by the contract between the employer and the union. This plan provides for the "benefit" to be paid to employees who work less than a full week in an amount equal to 80 percent of what they would have earned had they worked full time in that week, less any unemployment insurance benefits they received with respect to that week. Thus, the plan provides, in our opinion, that the "Automatic Short Week Benefit" would supplement unemployment insurance benefits payable to the claimant for the same week.

It is also noteworthy, in our opinion, that, as revealed by the additional evidence which we accepted, the money paid to the claimant for his "Automatic Short Week Benefit" was paid out of the same trust fund which is used to pay supplemental unemployment benefits under the contract.

The majority cited the Bradshaw case to uphold its conclusion that the money received by the claimant was wages. It should be pointed out however that the Supreme Court of California in Powell et al. v. California Department of Employment, et al. (1965), 63 AC 99, 45 Cal. Rptr. 136, stated in relationship to the Bradshaw case as follows:

> "Contentions urged by petitioners would require that we reexamine and redetermine the issues presented in Bradshaw. However, that has been rendered unnecessary by a subsequent legislative declaration which, we are persuaded, sets aside the declared legislative

> intent upon which the decision in Bradshaw was made to turn. Contrary to the holding in that case that 'unemployment insurance was not intended' to render aid to employees during periods covered by their private contracts, the Legislature, in 1959, enacted section 1265 of the Unemployment Insurance Code, which provides in pertinent part: 'Notwithstanding any other provisions of this division /which includes sections 1251 and 1252/, payments to an individual under a plan . . . established by an employer . . . for the purpose of supplementing unemployment compensation benefits shall not be construed to be wages . . . and benefits . . . shall not be denied . . . because of the receipt of payments under such . . . plans. This amendment is hereby declared to be merely a clarification of the original intention of the Legislature and is not a substantive change, and is in conformity with the existing administrative interpretation of the law.'
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> "The declaration of legislative intent contained in section 1265 obviously is sufficiently broad to include within its language the dismissal and severance payments in the instant cases. . . ."

Certainly, if section 1265 is sufficiently broad to include within its language dismissal and severance payments, it is likewise sufficiently broad to include within its language the "Automatic Short Week Benefit" which the claimant received. We would hold that these benefits represented supplemental unemployment benefits and not wages. We should not, as pointed out by the court in the Powell case, resolve the issue by the label attached but rather we should resolve the issue on the basis of a purpose and substance.

LOWELL NELSON

DON BLEWETT